

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 07-11865

Billy J. Cockrum,

Honorable Sean F. Cox

Defendant.

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**OPINION & ORDER**

Plaintiff United States of America (“the Government”) filed this action against Defendant Billy J. Cockrum (“Defendant”) on April 27, 2007, seeking a judgment for unpaid principal and interest on a student loan.

Acting *pro se*, Defendant filed an Answer on June 13, 2007, in which he asserts that “[t]he debt the plaintiff claimed is owed is not admitted. The debt should have been discharged in the defendants bankruptcy proceeding. The amount stated in the complaint is also incorrect.” [Docket Entry No. 3].

On July 12, 2007, the Government filed a Motion for Summary Judgment. In connection with that motion, the Government has submitted evidence of the claimed indebtedness and Defendant’s default. The Government further asserts that Defendant’s only claimed defense to this action – his assertion that his student loan was discharged – is without merit. The Government contends that under 11 U.S.C. §523(a)(8), student loans are excepted from being discharged during bankruptcy unless the debtor seeks and obtains from the bankruptcy court, during an adversary proceeding against the creditor, a ruling that the loan is dischargeable due to an undue hardship on the debtor. The Government asserts that Defendant filed no such

adversary proceeding during the course of his bankruptcy, and therefore Defendant cannot establish that the student loan was discharged.

On July 17, 2007, this Court sent written notice to the parties advising that the Government's Motion for Summary Judgment had been filed and would be heard by the Court on August 23, 2007.

Pursuant to Rule 7.1(b) of the Local Rules for the United States District Court for the Eastern District of Michigan, a "respondent opposing a motion must file a response, including a brief and supporting documents then available." Rule 7.1(d) further provides that a response to a dispositive motion must be filed within 21 days after service of the motion. Rule 7.1(e)(2) provides that oral hearings on motions will be heard "unless the judge at any time prior to the hearing orders their submission and determination without oral hearing on the briefs filed as required by this rule."

Because the Government's Motion for Summary Judgment was filed on July 12, 2007, if Defendant opposed the motion he was required to file a response brief no later than August 2, 2007. Given that no response had been filed by the *pro se* Defendant by August 1, 2007, this Court issued an Order on August 1, 2007, extending the time for Defendant to file a response until August 10, 2007. Nevertheless, to date, no response brief in opposition to the Government's motion has been filed by Defendant. In addition, Defendant did not appear for the August 23, 2007 hearing.

Based upon the materials submitted, the Court concludes that the Government is entitled to summary judgment in this matter. The Government correctly notes that once the Government has shown evidence of the claimed indebtedness and Defendant's default, Defendant must submit evidence showing a genuine issue for trial in order to survive summary judgment and

proceed to trial. That is, a defendant may not simply rest upon mere allegations or denials of the adverse party's pleadings. *See e.g., United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001). Here, the Government has submitted evidence establishing the claimed indebtedness and Defendant's default. The Government has further articulated why Defendant's assertion that the loan was discharged is without merit. Defendant has failed to respond to the motion and therefore has submitted no evidence in support of his stated defense.

In addition, at the September 10, 2007 hearing on this motion, Defendant acknowledged his debt and acknowledged that the debt has not been discharged.

Accordingly, **IT IS ORDERED** that the Government's Motion for Summary Judgment is **GRANTED**. A Judgment consistent with this Opinion & Order shall issue forthwith.

**IT IS SO ORDERED.**

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: September 12, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 12, 2007, by electronic means and up Billy J. Cockrum by ordinary mail at the address below:

Billy J. Cockrum  
1353 Wells Street  
Burton, MI 48529

S/Jennifer Hernandez

Case Manager